

J & L Refrigerated Trucking, Inc. and Michael F. Lordell. Case 17-CA-10330

February 1, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

Upon a charge filed on April 30, 1981, by Michael F. Lobdell, an individual, herein called employee Lobdell, and duly served on J & L Refrigerated Trucking, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 17, issued a complaint on May 28, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended.

The charge was filed on April 30, 1981, by employee Lobdell, and duly served on Respondent by certified mail on or about the same day. On May 28, 1981, the Regional Director issued a complaint and notice of hearing, which was duly served on Respondent by certified mail on or about the same day. When no answer was filed, counsel for the General Counsel on July 15, 1981, sent, by ordinary mail, a letter advising Respondent that it had failed to timely file an answer to the complaint, as required, and requesting Respondent to file an answer by July 22, 1981. When no answer was filed thereafter, counsel for the General Counsel on August 14, 1981, sent, by certified mail, another letter advising Respondent that it had failed to file an answer to the complaint as required by the Board's Rules and Regulations and informing Respondent of the consequences of its failure to timely file an answer thereto; namely, that such would have the effect of admitting all of the allegations in the complaint. The letter further advised Respondent that consideration would be given to filing to the Board a Motion for Summary Judgment if no answer were filed by August 24, 1981. The foregoing letter was received by Respondent on August 15, 1981. On September 4, 1981, counsel for the General Counsel sent, by certified mail, another letter to Respondent advising it that no answer to the complaint had been received, that if no answer were filed the allegations would be deemed admitted, and further informing Respondent that consideration would be given to filing to the Board a Motion for Summary Judgment if no answer were filed by September 18, 1981. The foregoing letter was received by Respondent on

September 5, 1981. Respondent did not, thereafter, file an answer.

On October 15, 1981, counsel for the General Counsel filed directly with the Board a motion for judgment on the pleadings. Subsequently, on October 22, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motion should not be granted. Respondent has not filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, provides, *inter alia*:

All allegations in the complaint, if no answer is filed . . . shall be deemed to be admitted to be true and shall be so found by the Board

. . . .

As set forth above, Respondent has not filed an answer to the complaint; the time within which to file having passed, we find all allegations in the complaint to be true. There being no issues in dispute, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

At all times material herein, Respondent, a corporation, with a place of business in Lee's Summit, Missouri, has been engaged in the business of interstate transportation of goods and materials. Respondent, in the course and conduct of furnishing transportation of goods and materials in interstate commerce, annually derives gross revenues in excess of \$50,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE UNFAIR LABOR PRACTICES

On or about April 6, 1981, Respondent discharged employee Lobdell and, since that date, has failed and refused, and continues to fail and refuse,

to reinstate him to his former position of employment. Respondent engaged in the acts and conduct described above because employee Lobdell concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

On the basis of the foregoing, we find that Respondent has interfered with, restrained, or coerced, and is interfering with, restraining, or coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and Respondent thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

We shall order that Respondent offer Michael F. Lobdell immediate and full reinstatement to his former job or, if his job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed. Moreover, we shall order that Respondent make him whole, with interest, for any loss of earnings he may have suffered as a consequence of the action taken against him by payment to him of a sum equal to what he would have earned, less net earnings, to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950). Interest on the backpay shall be computed as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).¹

¹ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent, by discharging Michael F. Lobdell and by failing and refusing to reinstate him to his former position of employment, has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, J & L Refrigerated Trucking, Inc., Lee's Summit, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Michael F. Lobdell immediate and full reinstatement to his former position or, if his position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole, with interest, for any loss of earnings he may have suffered as a result of the action taken against him in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Lee's Summit, Missouri, copies of the attached notice marked "Appendix."²

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge or otherwise interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in

Section 7 of the Act because they have concerted complained to us regarding the wages, hours, and working conditions of our employees, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer Michael F. Lobdell immediate and full reinstatement to his former position or, if his position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of earnings he may have suffered due to the action taken against him, with interest.

J & L REFRIGERATED TRUCKING,
INC.